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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,445	02/10/2004	Eric Klinker	52224/297343	1687
23370	7590	08/10/2007		
JOHN S. PRATT, ESQ KILPATRICK STOCKTON, LLP 1100 PEACHTREE STREET ATLANTA, GA 30309			EXAMINER ENG, DAVID Y	
			ART UNIT 2155	PAPER NUMBER
			MAIL DATE 08/10/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/774,445	Applicant(s) KLINKER, ERIC	
	Examiner DAVID Y. ENG	Art Unit 2155	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                               | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                      | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

### **DETAILED ACTION**

Claims 1-20 are active of which claims 1 and 11 are independent claims.

Applicants are requested to provide the missing information and to update the status of related applications on pages 1-2 and 18 of the specification.

The present abstract is objected to as being unclear. A new abstract which is more aptly descriptive of the nature and gist of the technical disclosure is requested. The abstract indicates that Applicant's invention is dynamic control of IP address. However, the abstract fails to provide the gist of dynamic control of IP address. Further, it appears that the claims are directed to select an optimal path from a source to a destination in accordance with measured inbound traffic performance and not dynamic control of IP address.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 11-20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claim combination recites program code which is not one of statutory subject matter.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 2155

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Basso et al. (USP 6,370,119) in view of Klinker et al. (USP 7,222,190).

See at least the abstract and column 11 line 13-26 in Basso et al. Basso et al. teach :

**Claims 1-3, 10**

A method for selecting a route in a data network to a destination address space (column 11, line 13-26), comprising:

receiving traffic information traversing the data network (inherent step because without it it does not work);

identifying sources that request access to the destination address space from the traffic information (inherent step because without it it does not work);

determining the destination address space is accessible through a plurality of network service providers;

measuring inbound traffic performance from each of the identified sources to the destination address space through each of the plurality of network service providers (see "the determination is based upon..." in column 11 line 16-27);

determining an optimal path associated with each of the sources to access the destination address space via one of the network service providers (column 11 line 13-16); and

directing each of the identified sources to access the destination address space via one of the network service providers in accordance with the optimal path associated with the source (column 11 line 31-34).

Basso et al. do not disclose that the routing from a source to a destination is through a service provider. It is well known that routing in a network is through a service provider. See column 6 line 50-53 in Klinker et al. Klinker et al. teach routing from a source to a destination in a network is through a service provider. From the teaching of Klinker et al., it would have been obvious to a person of ordinary skill in the art to route a communication from a source to a destination through a service provider so that Internet could be accessed.

**Claims 4, 8, 9**

The claims merely consist of non-functional descriptive material.

**Claim 5,**

See "cost" in line 10 of the abstract in Basso et al.

**Claim 6,**

Time is inherently a measurement in communication performance. See column 18 line 48-53 in Klinker.

**Claim 7**

Extracting destination address from a packet is inherent in network communication.

**Claims 11-20**

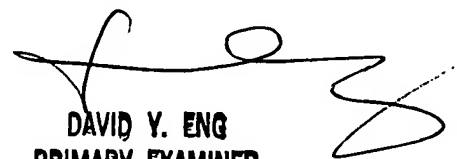
Claims 11-20 have the same limitations as claims 1-10 and therefore are rejected for the same reasons set forth above.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID Y. ENG whose telephone number is 571-272-3984. The examiner can normally be reached on M-F from 8AM to 3PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, SALEH NAJJAR, can be reached on 571-272-4006. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
DAVID Y. ENG  
PRIMARY EXAMINER